

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

-----  
In Re: AUTOMOTIVE PARTS  
ANTITRUST LITIGATION  
\_\_\_\_\_

ALL PARTS  
\_\_\_\_\_

THIS RELATES TO: ALL CASES  
\_\_\_\_\_

:  
:  
: Case No.: 12-MD-02311  
: Honorable Marianne O. Battani  
: Magistrate Judge Mona K. Majzoub  
:  
: Special Master Gene J. Esshaki  
:  
:  
:

**DECLARATION OF KIMBERLY C. METZGER IN SUPPORT OF NON-PARTY  
SUBARU OF INDIANA AUTOMOTIVE, INC.'S BRIEF IN OPPOSITION TO THE  
PARTIES' RENEWED MOTION TO COMPEL DISCOVERY FROM CERTAIN NON-  
PARTY ORIGINAL EQUIPMENT MANUFACTURERS AND THEIR AFFILIATED  
ENTITIES**

I, KIMBERLY C. METZGER, declare as follows:

1. I am an attorney duly licensed to practice law in the State of Indiana. I am a partner with the firm Ice Miller LLP in Indianapolis, Indiana. Together with my partner, Thomas E. Mixdorf, who is admitted to this Court, I represent non-party Subaru of Indiana Automotive, Inc. ("SIA") as a recipient of certain parties' "uniform subpoena."

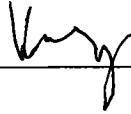
2. I have personal knowledge of the facts set forth in this Declaration, and if called upon to do so, I could and would testify competently thereto.

3. Attached as Exhibit A is a true and correct copy of an email I sent to Heather Novison, counsel for certain Serving Parties, on October 13, 2016.

4. Also included in Exhibit A is a true and correct copy of a responsive email I received from Angela Smedley, counsel for certain Serving Parties, on October 14, 2016.

5. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 22, 2016, in Indianapolis, Indiana.

A handwritten signature in black ink, appearing to read 'K. Metzger', is written over a horizontal line.

Kimberly C. Metzger

**From:** Smedley, Angela <ASmedley@winston.com>  
**Sent:** Friday, October 14, 2016 10:56 AM  
**To:** Metzger, Kimberly  
**Cc:** Mixdorf, Thomas E.  
**Subject:** FW: Auto Parts / OEM Discovery - Subaru of Indiana

Kim,

Thank you for reaching out. The Serving Parties are currently finalizing our narrowed discovery requests for SIA and will provide them to you as soon as possible. You should receive a copy of the 30(b)(6) transcripts this morning for your clients' review and signature. We apologize for the delay in getting these to you.

The Serving Parties agree that a meet and confer as soon as possible is warranted. We are determining our availability for early next week, and I will revert shortly with the windows that work for our group so we can identify a mutually agreeable time for a call.

Best regards,

**Angela Smedley**  
Winston & Strawn LLP  
D: +1 (212) 294-5348  
M:  
winston.com  
**WINSTON  
& STRAWN**  
LLP

---

**From:** Metzger, Kimberly [<mailto:Kimberly.Metzger@icemiller.com>]  
**Sent:** Thursday, October 13, 2016 3:15 PM  
**To:** Novison, Heather  
**Cc:** Mixdorf, Thomas E.  
**Subject:** RE: Auto Parts / OEM Discovery

Heather,

Following on my voicemail, my partner Tom Mixdorf and I represent SSE Subaru of Indiana Automotive, Inc. The SIA depositions were completed on August 16. In compliance with the Special Master's recent communication mandating the parties and OEMs to meet and confer on the scope of discovery, we write to request a meet and confer as soon as possible. We need to receive a proposal from the serving Parties, informed by the SIA depositions, that narrows the scope of the subpoena and leaves us sufficient time to evaluate it, discuss with our client, and make a meaningful response before October 31, the date the SM has set for completion of meet and confers.

Also, we have not received a copy of the deposition transcripts for our client representatives' review and signature. If you have draft copies of the transcripts, please forward them as soon as possible or provide contact information for the court reporter.

Thank you,  
Kim Metzger



LEGAL COUNSEL

**Kimberly Metzger, CIPP/US, CIPM**

*Fellow of Information Privacy*

Partner

[Kimberly.Metzger@icemiller.com](mailto:Kimberly.Metzger@icemiller.com)

p 317-236-2296 f 317-592-4823

c 317-363-3232

Ice Miller LLP

One American Square

Suite 2900

Indianapolis, IN 46282-0200

To learn more about the firm and its services, visit us at

[icemiller.com](http://icemiller.com)

**From:** Novison, Heather [<mailto:Heather.Novison@weil.com>]

**Sent:** Monday, October 03, 2016 4:44 PM

**To:** Kass, Colin; Munkittrick, David A.; [anthony.anscombe@sedgwicklaw.com](mailto:anthony.anscombe@sedgwicklaw.com); [jsessions@kvn.com](mailto:jsessions@kvn.com); Adam Wolfson; Schaper, Michael; Mixdorf, Thomas E.; Metzger, Kimberly

**Cc:** OEM [subpoenas@lists.susmangodfrey.com](mailto:subpoenas@lists.susmangodfrey.com)

**Subject:** Auto Parts / OEM Discovery

All,

Thank you for your cooperation over the last several weeks in connection with the 30(b)(6) depositions of the OEM groups. As a next step, the parties will be reaching out to each group with a renewed proposal for production in light of what we learned at the depositions. We are hopeful that we will be able to reach a resolution with each group, or at least narrow the outstanding issues as much as possible.

While we are eager to find a resolution with each OEM group on the production of discovery in response to the parties' subpoenas, at the September 14 status conference Judge Battani ordered the parties to submit a proposal to Special Master Eshaki regarding next steps for the OEM discovery process. Defendants, EPPs and TEDPs plan to submit the below proposal to the Special Master. Under this proposal, the motions to compel would be briefed and argued directly to Judge Battani, without first approaching Special Master Eshaki. These parties believe this approach is consistent with the Judge's desire to move the OEM discovery process forward promptly, and to maintain the current class certification schedule in the lead three cases. Please note that ADPs do not agree that the Master may be bypassed and that the matter may go directly to Judge Battani, and will be proposing that the matter first go to the Special Master.

Proposed Briefing Schedule	
Friday, 11/11	Parties file renewed motion to compel on open issues determined by the depositions
Tuesday, 11/22	OEMs file responses
Friday, 12/2	Parties file reply
Wednesday, 12/14	Hearing before Judge Battani

It is the intent of the parties to seek agreement with each OEM group such that a renewed motion is not required. Under this proposed schedule, the parties and OEM groups should have adequate time to engage in a productive and efficient meet and confer process. However, in order for the parties to prepare and file any necessary briefing by the proposed filing date, the parties and OEM groups will need to complete the process and identify any items at impasse by Friday, 11/4.

The parties intend to submit this proposal to the Special Master on Friday, 10/7. Please let us know before then if the OEM groups agree with this approach. We are also willing to have a meet and confer call with you on Wednesday, 10/5 at 12pm ET to further discuss.

Regards,  
Heather



Heather A. Novison

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
[heather.novison@weil.com](mailto:heather.novison@weil.com)  
+1 212 310 8864 Direct  
+1 212 310 8007 Fax

---

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, [postmaster@weil.com](mailto:postmaster@weil.com), and destroy the original message. Thank you.

\*\*\*\*\*  
\*\*\*\*\*

CONFIDENTIALITY NOTICE: This E-mail and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution, or use of this E-mail or any attachment is prohibited. If you have received this E-mail in error, please notify us immediately by returning it to the sender and delete this copy from your system.

Thank you.

ICE MILLER LLP

\*\*\*\*\*  
\*\*\*\*\*

---

The information contained in this email message is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by email, [postmaster@weil.com](mailto:postmaster@weil.com), and destroy the original message. Thank you.

---

The contents of this message may be privileged and confidential. If this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author. Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under applicable tax laws and regulations.